



IDAHO DEPARTMENT OF HEALTH & WELFARE
DIVISION OF PUBLIC HEALTH

Cottage Food Public Meeting Transcript

H = Division of Public Health Employee

A = Meeting Attendee

H1, H2, etc = Health District Employee

April 29th – Moscow

H: Where do we go? What do you guys as stakeholders in this conversation, what do we need to do?

A: I have two comments and questions. One is why are we going through this? What spurred this legislation research? And, number two, what do other states do? Why do we need to reinvent the wheel?

H: Great questions. Let me address the first one. There is right now, an online campaign that says it is illegal to sell a cupcake in Idaho and that Idaho needs a cottage foods law. The first part of that statement is not an accurate statement. It is not illegal to sell a cupcake in Idaho. We don't regulate that. Do we need a cottage foods law? That's the question I guess I am asking. Like I said, it is true if you look up the term cottage foods, no, we don't have that right now defined in our law or regulations. That is a true statement.

Now, to go to the second question, I did speak with each of our neighboring states. I haven't spoken with every state around the country. We are one of only four or five states that don't have specific language about cottage foods in our law. I'll try to go around the region. I'm visualizing this, I know if you are in the audience I am doing this backwards, but I'm just visualizing it in my mind, okay? So, Washington State requires a registration, they also require a home kitchen inspection. Oregon requires registration and I think they are trying to do home kitchen inspections as well. Nevada requires registration but not a home kitchen inspection. Utah requires registration and home kitchen inspection. Wyoming said they don't regulate it. They have it codified that they don't regulate it. Montana has a bill in their legislature, very similar to Bill 187 and I have heard through the rumor mill that that did pass in Montana. So I don't know what Montana is doing with it right now.

A: Question regarding each one of those states. What was the origination of where those cottage food laws came from? What was the source of origination? – question number one. Question number two – What impact did it have on the states, from before and after?

H: For question number one, I don't honestly know the answer. I don't know the origin of some of these bills and pieces of legislation. I do know the origin in Idaho. There are a couple of different folks that are trying to work on this. There is one organization called the Idaho Organization of Resource Councils that is heavily invested in 187. There is another, a private individual, I don't know if he is in the room right now. I've actually never met him, I don't want to name him, but he's from here in the Moscow area. He was the primary author behind 106. 106 did not get a hearing.

What impact? That's a great question. I'll try to answer it in very general terms. What my state counterparts have told me, from each of those neighboring states – let me just talk about the states with the registration component. They have said that while it is true that some vendors register, they estimate that the vast majority do not. And I asked, 'What do you do? What do you do with a vendor who doesn't register?' And they say, 'we really don't have the tools to enforce it, so there really is nothing we can do about it right now.' One response that came to me from one of my neighboring states – I don't want to tell you which state – this is my favorite response, 'She said yeah, I estimate for every person that registers, there are probably five to seven who don't and there is nothing I can do about it.'

A: So what I'm hearing you say is that inadvertently they are putting people in the position where they are violating the law?

H: Yeah. I wish I could argue against that. I can't argue against that. Let me talk about Montana. I don't know, but I heard through rumor that their law passed but I don't know specifically what it did to them. I can tell you, and this sounds like the poor, whiny state employee, and I'm not saying it in that tone of voice, but I want you to understand that my counterparts in Montana have three people on their state food safety program. I have one and a half. I keep referring to Barb as a half. Barb is a full time employee with the State but she is only allowed to allot half of her time to the food program. Wyoming told me 'we just codified our practice without requiring regulation' and I asked him 'Do you have any foodborne outbreaks?' He said, 'Not to our knowledge but we are not tracking it.' Again, and they allow the non-TCS food like I described. The reason we don't regulate those is because historical evidence, we have no indication that those kinds of foods are responsible for creating a public health threat. There are things that can happen, specifically viral transmission. Viruses are a little bit different than bacteria. A virus transmission can happen with a doorknob, for crying out loud! Again, most people don't eat doorknobs.

A: I'm curious about the requirements for a kitchen inspection. What was involved in that and is there any good reason since there are a few things there that are cooked, but not very many.

H: So, I'm not exactly sure how to answer the second part of your question. The first part of your question is all just based on what the laws in those respective states dictates. Those laws said, if we are going to do this cottage foods law then we were going to have home kitchen inspection. Now, in Idaho, to be quite frank with you, I'm nervous about that. I think it is a slippery slope. I

really don't have the intention nor the desire to go into a person's private home to conduct an inspection. From my perspective, it's a slippery slope if we were to establish it that way. So, I don't know if that addressed your question directly.

A: What part, an inspection for what?

H: And that is a great question. I've talked with the Health Districts and the same question came up with the Health Districts. If we had to do a home kitchen inspection, what would we be inspecting? What would the standards be? And I don't have the answers for that question right now. Ultimately though, it is fair to understand that, ultimately my job is to do what the law tells me to do. And if the law were to say, 'yeah you've got to go do this on this food stuff' then we would have to go do it because we have to do what the law directs us to do.

A: I may be a very simple person. We don't have a history of disease outbreak in those foods. We have other states that have said that they haven't had any diseases that they are aware of occurring from those foods. And I mean significant disease outbreaks. Why would we want to promulgate additional rules for these foods?

H: Again, keep in mind the State, nor the Health Districts supported 187. And, the only answer I can give you is, from what I've heard from the other side is that 'Idaho doesn't have a cottage food law.'

A: So it sounds like Wyoming may have already cut the path for us with saying 'we're just going to codify what we are currently doing to get protection.' So that it is clear?

H: Perhaps. Now keep in mind that House Bill 106 would have done that, what you just said, it would have effectively codified our existing practice. My program and the Health Districts collectively, did support 106, but 106 did not get a hearing at the legislative level.

A: Why?

H: I do not know the answer to that question. That's for the legislative committees to decide.

A: Were there lobbyist involved?

H: Perhaps. I honestly don't know. That's the kind of discussion that takes place behind closed doors in the legislative committees.

A: That's where I was going to go. What were the significant differences between 106 and the bill that did get heard?

H: So 106, from my recollection, effectively said, 'A kitchen that produces a non-TCS food is exempt from the definition of a food establishment' or something along those lines. Now I did have other language in there, at my suggestion, we wanted to limit it and make sure we were not talking about home canned foods, and we were not talking about acidified foods. I've had a lot of questions about acidified foods like pickles. And my response to that is 'I am not concerned

about the end product. I am concerned about the processes that get employed from starting point to end product.' And we still regulate a lot of those things. When you home-can something, if it is not done correctly, you create the ideal conditions for an organism called *Clostridium botulinum*. This is the organism that is responsible for botulism. It is what we call an anaerobic bacterium which means it needs zero oxygen in order to grow. When you home-can and that container get hermetically sealed in an almost vacuumed packaged format, you have created the ideal conditions for *Clostridium botulinum*. Same with acidified foods, if it's not done correctly and you put a lid on that food and seal that lid down you create the ideal conditions for *Clostridium botulinum* and growth. So we don't want to go down that road. At least I'm not willing to go down that road right now. I am willing to have a conversation about it, but I don't know how we get to the point of allowing those foods without specific rules and regulations behind it. I can't say process 'A' is approved but process 'B' is not unless I have some kind of rule behind that.

A: Well, we are going in the direction of my question right now because of the pickles. The Department of Health and Welfare does delegate to the Health Districts to do inspections and whatever. And there are now home inspections, home kitchen inspections done for the processing?

H: No, not that I'm aware of. I am not aware of any home kitchens that are being inspected right now.

A: For any cottage food industry, you're just not...you're talking about specifically the highly TCS foods? Are those allowed at all of them?

H: Right now they are allowed, but you have to be a licensed and inspected processor of those foods to be able to provide those foods. And the way that you do that is you have an approved facility that gets licensed and inspected by the local Health District. We generally do not authorize private homes for this use, because of the prevailing statutes. One of the prevailing statutes requires the Health Districts or me to conduct unannounced inspections of food establishments. We look at that and we say, 'It's not fair for us to expect a homeowner to sit around and wait for us to show up and do an unannounced inspection.' Rather we just say we don't approve a home for that use and then we don't have to worry about someone trying to sit at home and wait for us to show up. Does that answer your question?

A: So by law, you can't produce the pickles then.

H: Well, you can, you just have to have an approved facility where you are doing it.

A: Did House Bill 106 allow pickles?

H: House Bill 106, the language where I said I introduced stuff including the home canned foods and the acidified foods – those are already defined in Federal Regulations. My proposed language for 106 with the author of 106 was 'If you put in there references to the Code of

Federal Regulations that already define these foods, we don't have to redefine them. We don't have to reinvent the wheel.' So in the Federal Regulations, it talks about acidified foods, then again I am willing to have this conversation but I have to have support behind me as to how we are going to make this happen.

In the existing Code of Federal Regulations, when it talks about acidified foods and trying to control for *Clostridium botulinum*, I'll abbreviate that to C-bot okay? When we talk about controlling C-bot, in food safety we talk about hurdle technology. So we want to introduce as many hurdles as we possibly can to C-bot. C-bot, incidentally, if you're not familiar, once it is inside your body it can paralyze your nervous system and your muscles, specifically, your diaphragm. So you effectively suffocate while you are fully conscious and aware of that happening. Not a very fun way to be sick I would imagine. I've never had C-bot. So there are three hurdles that we are looking at. Number one is the acidification process. If we can get the pH below 4.6, that inhibits C-bot growth. But the closer we are to 4.6 we are kind of on the fence in this gray zone. So we really want to get it well below 4.6 plus we want to get some other hurdles in place. So another hurdle would be refrigeration. Keep it at or below 41 degrees, that's another hurdle. The third hurdle for C-bot growth is to not having it in a vacuumed package or hermetically sealed container. So we are introducing it to oxygen to prohibit C-bot growth. If we can find a way to do that, then I'm absolutely willing to have the conversation. Incidentally, those three factors right there, in the Code of Federal Regulations, if you meet those three factors, the Code of Federal Regulations says 'that the acidified rules do not apply to that particular food item.' Did that answer your question?

A: Yes, you answered it.

A: I may mention, in case you haven't heard, that there is a botulism outbreak in Ohio, one dead and at least twenty hospitalized, possibly more. And they're suspecting the source is home canned potatoes from a church.

A: It's interesting that you say they canned because from some of the reading I was doing, it went back to one of the people who worked with USDA, particularly in this area, and also has also traveled all over the world, said that the documented cases of C-bot that no documented cases came from acidified fermented foods. All the documented cases came from canned foods. So there may be some grounds for acidified but it is going to have to be defined carefully.

H: Right and you also mentioned fermented which is a different process. The end result of a fermented food is a pH below 4.6. The difference, with an acidified food, you are intentionally adding acid to the food with the intention of driving down the pH. Fermented foods undergo a natural fermentation process and the end result is a pH below 4.6 but acid is not added.

A: Like your grandmother's sauerkraut.

- H: Exactly. Kombucha, sauerkraut, there are fermented sausages. These things have an end result of 4.6. And again, I'm not worried about the end product. I'm worried about the process that gets involved from the cabbage to sauerkraut.
- H2: With a lot of the canned items, too, that product needs to be cooked. Once we cook that vegetable, it ends up supporting bacteria in a little bit different way than it was when it was raw.
- H: There are a lot of different methods for home canning foods. Some methods will reach what we call a kill-step, where the bacteria are killed off. Some processes don't. So here again, I would have to say, 'method A is approved, method B may be, but method C is not approved.' I don't see a way to do that without having rules behind it. And so instead, we say no home canned foods.
- A: What about Peuyeum?
- H: It's fermented. For the science of food safety, it is not chemically cooked, so it is fermented. I understand what you are saying. The end result is a pH below 4.6.
- A: In the pickled conversation, you mentioned vacuum-sealing. And from that talk I think about that and I am still a little unclear. You would think that vacuum-sealing was a good thing, but maybe it isn't?
- H: It depends on how it is done. Like a lot of thing, it depends on how it's done. I'm not here to say vacuum-packaging is bad. That's not necessarily the case at all. If it is done incorrectly though, you are creating some ideal conditions for some growth of organisms that you probably don't want in your food. We don't allow vacuum-packaging of fresh fish. C-bot spores are commonly found in the intestinal tract of fish. If you go to the grocery store and you buy fish that is cryo-vacked; it's got that vacuum-package around it, if you read it, it will say, remove from packaging before thawing. That's because you are introducing oxygen into the package as it's thawing. That controls for the growth of C-bot.
- A: How can I get more information about that?
- H: I'd probably go online; I think would be the best place right now. You know if it's online it must be true right? Other questions or comments?
- A: First of all I want to thank you for coming out and doing this.
- H: You're welcome.
- A: Second of all, you are working with the Health Districts for consistency. Because it sounds like some of this may have come from a lack of consistency to start with.
- H: Yeah, There are certain aspects where there are inconsistencies. And we are trying to work to resolve and minimize those. Ultimately, there always will be inconsistencies because we are

talking about eight different agencies. So there will be some degree of inconsistencies across the board, but we will try to minimize those as much as we can.

A: A question regarding from a legal standpoint. It's fabulous to have someone like yourself who is coming out and taking the viewpoint and doing what you're doing. Also fabulous to have someone like the current state attorney general opinion like we just got. Let's go forward. Let's say that you only clarify inconsistencies at this point. Let's say we go forward eight years, ten years down the line. The individual who comes in behind you takes the stance that 'you know, we haven't had any documented cases yet, but that one case is right around the corner and we really need to ratchet down control here so we can be safe. Because we want to be sure that we can be as safe as we can possibly be!' Because we always know there is always that balance, that risk-factor thing going on. Could they then, if there isn't something put in place, like what Wyoming has done. Could they then change this so that it then becomes difficult for people to do what they are doing now?

H: I think from a hypothetical perspective, the answer is 'yes, that could happen.' I can't comfortably tell you 'no, that can't happen.' It could, but, first of all, I will come back to that. I just want to show this last slide here. I can accept public comments on this until July 24th. That is because, if we do have to write rules, that is my deadline for doing it. If I have to present rules to the January legislative session in 2016, I have to work backwards. That means that my Board, the Health and Welfare Board, has to hear those rules at their November 19th meeting. That date is set in stone. It is chiseled like in granite. Then I back up a little bit, I have to allow public comment on a proposed draft. That means that final proposed draft has to be ready around the first part of September. Which means, if there is a draft rule, I would have to be having public hearings in mid-September timeframe. If we've got a rule about it, I'll be back up here to have some public hearings in mid-September. So backing up from there, in order to allow me the time to incorporate comments into any kind of proposed rule then I've just identified July 24th as that deadline for me to work with.

If you would like to submit any comments, there are two email addresses up there. That first one goes directly to my desk, that second one at foodprotection@dhw.idaho.gov is our general email inbox. We do try to monitor that daily, Barb and I. But there might be days where we don't quite get to it but we do check it fairly frequently. You can give either one of us a call. 5938 goes right to Barb's desk and 5936 goes right to my desk. You can mail in comments. There is the mailing address for you. You do have to include that 4th floor thing. So we will accept comments in any variety of ways. Alright, I will be having this same meeting tomorrow evening. I've got one in Troy, one in Potlatch and one here tomorrow.

A: At 6 o'clock.

H: It's the same meeting. You are welcome to attend that. I intend to say the same basic things that I've said in this meeting. Are there other comments that you want to make for the record?

- A: I've heard through the market so far that there was some debate about whether Idaho would accept Washington and Oregon vendors.
- H: Let me talk about that for a second. We talked about that a little this morning. This is really incumbent on the vendor in Washington State. My understanding is that the permit Washington State issues – some of those permits authorize the vendor to cross State lines. Some of the permits do not authorize the vendor to cross State lines. I cannot ethically tell a vendor, if they know their permit does not allow them to cross State lines, I cannot ethically tell the vendor 'hey, come on into Idaho we will welcome you, I don't care what Washington State tells you.' I just can't ethically do that. So that is really incumbent on the vendors to know what their status is with the Washington State Department of Ag. Again, I don't know all the different permits they issue, I just know that some of their permits say 'yes, you can cross State lines' and some of their permits say, 'no you can't.' Does that answer your question?
- A: Yep.
- H: Any other comments or questions for the record that you would like to talk about cottage foods? Yes sir?
- A: Is there a way to get the people who are coming in that are not regulated educated in the situation so they at least have a basic understanding of our food handler practices?
- H: That is a great question.
- A: Here they are coming off the farm, putting their produce in the farmers market, is there a possibility to come up with just a basic you have to take a food handlers test or you need to have this understanding before you're able to sell your wares, whether it is regulated or not.
- H: Yeah, we had a good conversation this morning about the possibility of the Idaho Farmers Market Association having their members be able to have a training program or something like that in place. From my perspective, I can't enforce it unless there is a rule there to support me with that. But an association could absolutely make a policy or a rule about that for their association members if they were to explore something like that. So I think there is a way to do it. I'm not exactly sure how it would happen but yes, I think there is a way to do it.
- A: I have a question. Do they have any documented cases where farmers markets or anything like that showing need for that type of training? Do we have anything that has come up from a disease standpoint from any of the public health districts showing that we have got issues that are warranting needing them for training for people?
- H: No, I'm not aware of any issues like that. And that's why I say, again, if an association wanted to make that type of a policy that is up to them. And we would do whatever we could to support that kind of a policy if it were implemented. But without a rule, no I can't do that.
- A: I was just looking for – Are there any documented cases of problems.

H: I don't have those. The Health Districts may have information about a place or things that have been filed.

A: (Local farmers market manager) has a mandatory farmer's market meeting for all of the vendors.